Supreme Court, U. S.
FILED
APR 24 1980
MICHAEL RODAK, JR., CLERK

79-1546

IN THE
SUPREME COURT OF THE UNITED STATES

MELANIE M. LAYFIELD,

Petitioner

vs.

BILL HEARD CHEVROLET COMPANY

and

GENERAL MOTORS ACCEPTANCE CORPORATION,

Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979, NO. 79-1546

MELANIE M. LAYFIELD, PETITIONER

VS.

BILL HEARD CHEVROLET COMPANY

AND

GENERAL MOTORS ACCEPTANCE CORPORATION,

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In accordance with Rule 40 of the Rules of the Supreme Court of the United States, the following information is provided:

(a)

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 607 F. 2d 1097 (5th Cir. 1979).

(b)

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari, and the jurisdiction of this Court is not challenged by Respondents.

STATUTES AND REGULATIONS

This petition involves the following statutes and regulations:

1. Rule 15(a) of the Federal Rules of Civil Procedure, Fed. Rules Civ. Proc., Rule 15(a), 28 U.S.C.A., which provides as follows:

"A party may amend his pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty (20) days after it is served. Otherwise a party may amend his pleadings only by leave of Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders."

2. Federal Reserve Board Regulation Z, 12 CFR 226.8(c)(4), which provides as follows:

"In the case of a credit sale, in addition to the items required to be disclosed under Paragraph (b) of this section the following items, as applicable, shall be disclosed:.....(4) All other charges, individually itemized, which are included in the amount financed but which are not part of the finance charge."

3. Rule and Order of Court dated September 2, 1960, relating to Motions and Briefs filed in the United States District Court for the Middle District of Georgia, which provides as follows:

"(a) Counsel shall submit with all written Motions a brief of authorities (and written argument if desired), and where allegations of fact are relied upon, affidavits in support thereof.

(b) Respndent's counsel desiring to submit a response, brief, or affidavits, shall submit the same within ten days after service of Movant's motion and brief.

(c) Movant's counsel shall submit any desired reply brief, argument, or affidavits within five days after service of Respondent's response, brief, or affidavits.

(d) Movant and Respondent shall serve copies of all motions, brief, affidavits (and argument if submitted) upon opposing counsel promptly, and shall file proof of such service.

(e) All motions shall be decided by the Court without a hearing unless otherwise ordered by the Court on its own motion, or in its discretion upon request of counsel.

SO ORDERED, this 2nd day of September, 1960.

/s/ T. Hoyt Davis
United States District Judge

/s/ W. A. Bootle
United States District Judge

Filed at 11:00 A.M.
JOHN P. COWART
Clerk, U. S. District Court"

QUESTIONS PRESENTED

1.

Whether the United States Court of Appeals for the Fifth Circuit erred in holding that the trial court did not abuse its discretion in disallowing Plaintiff's/Petitioner's belated amendment to her complaint where Plaintiff/Petitioner repeatedly failed to comply with the Federal Rules of Civil Procedure and the published local rules of the United States District Court for the Middle District of Georgia, where a motion for summary judgment had already been filed and was pending with respect to Plaintiff's complaint at the time that Plaintiff filed a Motion for Leave to Amend her complaint, where the alleged facts upon which Plaintiff's purported amendment was based were well known to Plaintiff at the time her original complaint was filed, and where the grounds asserted in Plaintiff's belated Motion for Leave to Amend her complaint were admittedly false.

2.

Whether the United States Court of Appeals for the Fifth Circuit erred in affirming the trial court's grant of Defendants'/Respondents/ Motion for Summary Judgment with respect to the Truth-in-Lending claim of Plaintiff that the documentary fee was improperly disclosed, where it was otherwise shown by Defendants through unopposed affidavits and exhibits that the documentary fee was properly itemized and disclosed as an "other charge" in accordance with the requirements of Regulation Z, Federal Reserve Board staff opinion letters, and case precedent from the United States Court of Appeals for the Fifth Circuit.

STATEMENT OF THE CASE

Respondents are dissatisfied with Petitioner's statement of the case, and herewith present their own statement of the case. For ease of identification, the parties to this matter will be referred to in this brief as follows: Plaintiff/Petitioner/Melanie M. Layfield will be referred to as "Layfield." Defendant/Respondent/Bill Heard Chevrolet Company will be referred to as "Bill Heard." Defendant/Respondent/General Motors Acceptance Corporation will be referred to as "GMAC."

On December 12, 1977, Layfield filed a complaint in the United States District Court for the Middle District of Georgia, Columbus Division, alleging two Truth-in-Lending violations arising out of the execution of a retail installment contract for the purchase of an automobile by Layfield from Bill Heard and financed by GMAC. Count One complained of the disclosure of a "state inspection fee" of $3.00 (this count has since been abandoned by Layfield), and Count Two complained of the disclosure of a documentary fee of $16.00.

The complaint and summons were served on both GMAC and Bill Heard on January 3, 1978. On January 23, 1978, GMAC and Bill Heard filed timely defensive pleadings and cross claims, and GMAC filed a counterclaim against Plaintiff. The counterclaim of GMAC against Plaintiff has never been answered and is in default.

On February 15, 1978, some 23 days after the defensive pleadings of both Bill Heard and GMAC were filed and served, Layfield filed with the trial court a pleading denominated "Amendment," without having first obtained leave of court to amend, without requesting or securing the consent of the opposing parties, and without filing any motion and supporting affidavits, brief of authority, or argument in support thereof. This purported "Amendment" set forth an alleged violation of the Motor Vehicle Information and Costs Savings Act of 1972, 15

USC §1981 et seq. On February 22, 1978, GMAC answered Layfield's purported "Amendment," and on February 24, 1978, Bill Heard filed an answer to Layfield's purported "Amendment," setting forth in its answer objections to the filing of the amendment without having first obtained leave of court or written consent of the adverse parties. Contemporaneously with the filing of the answer and objections to the amendment, Bill Heard filed a Motion to Dismiss the amended complaint for failure to state a claim upon which relief could be granted (Federal Rules of Civil Procedure, Rule 12(b)(6)), and for failure to obtain leave of court pursuant to Rule 15(a) of the Federal Rules of Civil Procedure. At the same time, Bill Heard filed a motion for summary judgment against Plaintiff and filed a brief in support of both its motion to dismiss and its motion for summary judgment, together with an affidavit in support of its motion for summary judgment.

Layfield did not respond to Bill Heard's motion to dismiss, but on March 6, 1978, moved the court, for the first time, for leave to amend her complaint, on the grounds that "Plaintiff has just learned of the existence of the additional facts stated herein and justice so requires." Attached to her motion for leave to amend was a proposed "Amendment to Complaint," again setting forth allegations with reference to the Motor Vehicle Information and Costs Savings Act of 1972, supra, and setting forth two new counts, one alleging additional Truth-in-Lending violations, and another alleging violation of a Georgia state statute dealing with insurance policies. In filing her belated motion for leave to amend, Layfield again failed to comply with the local rule of the United States District Court for the Middle District of Georgia requiring a brief of authorities and affidavits in support of the factual allegations relied on in the Motion.

On March 10, 1978, Layfield filed a brief in opposition to the motion of Bill Heard for summary judgment, but did not respond, and has not yet responded, to Bill Heard's motion or brief in opposition to the allowance of the amended complaint.

On March 13, 1978, GMAC moved for summary judgment

against Layfield, and filed supporting affidavits and a brief of authority, which also incorporated the brief of Bill Heard. Layfield has never responded to GMAC's Motion for Summary Judgment or Brief in Support thereof, and Layfield has never filed any affidavits in opposition to the affidavits filed by Bill Heard and GMAC.

Finally, on March 17, 1978, Bill Heard moved the court to disallow the Plaintiff's final amendment to her complaint, and filed a brief in support of that motion. Layfield did not respond to any of the motions made to disallow her amended pleadings, nor did she ever file a brief or affidavit in support of her own motion.

On April 5, 1978, the trial judge entered an order disallowing Layfield's amendment, and also entered an order granting summary judgment in favor of both GMAC and Bill Heard as against the Plaintiff's complaint.

On April 14, 1978, Layfield filed her notice of appeal to the United States Court of Appeals for the Fifth Circuit, and on December 3, 1979, following briefing of authority and oral argument in the Fifth Circuit, that Court affirmed the orders and judgments entered by the trial court. Layfield thereafter filed a timely petition for rehearing en banc in the United States Court of Appeals for the Fifth Circuit, which was denied on January 7, 1980.

Layfield has now applied to this Honorable Court for a Writ of Certiorari, and has abandoned all issues, both substantive and procedural, raised in either the trial court or the United States Court of Appeals for the Fifth Circuit, except the procedural issue relative to the discretion of the trial court to allow or disallow the proposed amendment, and the substantive issue of the trial court's ruling that the disclosure of the documentary fee was not violative of the Federal Truth-in-Lending Act.

(f)

SUMMARY OF ARGUMENT

Since the argument of Respondents will not exceed twenty (20) pages in length, no summary of argument will be set forth.

(g)

ARGUMENT AND CITATION OF AUTHORITY

I. THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT CORRECTLY HELD THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING LAYFIELD'S BELATED MOTION FOR LEAVE TO AMEND HER COMPLAINT.

Layfield's Petition for Certiorari relies upon the purported absence of prejudice to the Defendants in the trial court as the sole rationale for her argument that the trial court abused its discretion in denying her motion for leave to amend. That is to say, the Petitioner asserts that, in the absence of a showing of prejudice to the opposing parties, the denial of a motion for leave to amend is, *per se*, an abuse of discretion. This simply is not, and should not be, the law.

First, there was evidence before the trial court of prejudice to the Defendants should the amendment be allowed. The trial court had before it evidence to the effect that, subsequent to the filing of Plaintiff's complaint, but prior to the filing of any answer by the Defendants, a settlement offer was made to Layfield on behalf of Bill Heard, thus leading Layfield to believe that Bill Heard thought that there might be some possible merit to her claim as originally filed. Bill Heard, in its motion to disallow the amendment, demonstrated to the trial court that the piecemeal pleading process being employed by Layfield was not within the contemplation of the Federal Rules of Civil Procedure, and that to allow the Plaintiff to plead her case through the use of two subsequent amendments (setting forth facts and additional

claims well known to the Plaintiff when the original complaint was filed) would allow her to plead a portion of the facts, obtain a settlement offer (and thus get at least some idea of the Defendants' view of her claim), reject the proposed settlement and then file other and different claims. Sufficient prejudice was thus demonstrated to permit the trial court, in its discretion, to disallow Layfield's belated amendments, and such finding by the trial court would not have been erroneous.

Moreover, the law is clear that there can be reasons other than prejudice to the opposing party for disallowance of amendments. This Court has addressed this very issue in the case of *Foman vs. Davis*, 371 U.S. 178 (1962). There, this Honorable Court held that amendments might be disallowed for undue prejudice to the opposing party, bad faith, the futility of the amendment, where the amendment was being offered with a dilatory motive, and the like. In both the trial court and the Court of Appeals, it was shown in the opposition to the belated motion for leave to amend filed by Layfield, that the amendment was offered in bad faith, and would, in any event, be futile.

In her motion for leave to amend, Layfield asserted as the reason for her amendment that the facts set forth in the amendment were newly discovered. Yet in her brief to the Fifth Circuit Court of Appeals, Layfield admitted that there were no newly discovered facts, and that all of the information contained in her proffered amendment were known to her at the time she filed her original complaint. See *Layfield vs. Bill Heard Chevrolet Co.*, 607 F. 2d 1097, 1099 (5th Cir. 1979). Both the trial court and the appellate court were made aware of this discrepancy between the purported grounds for Layfield's motion and the true facts as they existed, thus giving a sufficient basis for the trial court to find that the amendment was offered in bad faith. Since a motion for summary judgment was already pending at the time that Layfield filed her belated motion, this would also be a sufficient basis for the trial court to find that the amendment was offered with a dilatory motive.

In addition, Respondents demonstrated to the trial court

that the amendment which Plaintiff sought to offer utterly failed to state any claims upon which relief could be granted, and that the allowance of the amendment would therefore be a futile act.

Finally, and perhaps most important, it was demonstrated to the trial court and to the Fifth Circuit Court of Appeals that Layfield, in offering her belated amendment, initially ignored the Federal Rules of Civil Procedure, requiring that leave of court be obtained before filing an amendment to a complaint, and also ignored local court rules requiring a brief of authorities and an affidavit when factual matters are being relied upon in support of the motion. Thereafter, after finally complying with the Federal Rules of Civil Procedure by filing a motion for leave to amend, Layfield continued to ignore the local court rule requiring the filing of a brief or affidavit in support of her motion. The repeated failure to comply with the local rule, was, in and of itself, sufficient reason for the appellate court to affirm the trial court's denial of Layfield's motion for leave to amend her complaint. See *Waters vs. Weyerhaeuser Mortgage Co.*, 582 F. 2d 503 (9th Cir. 1978).

A reading of Layfield's petition for certiorari shows that she has abandoned all the grounds upon which the denial of her motion for leave to amend could have been granted, save only the ground that there was no prejudice to the opposing party. Therefore, pretermitting the issue of prejudice to the opposing party, there were other grounds urged in the trial and appellate courts, any one of which provided the trial court with a sufficient basis for denying leave to amend, and those grounds were recognized by this Court in *Foman vs. Davis, supra.* Since there were other available grounds upon which the denial of leave to amend was based, Layfield has failed to show that the appellate court erred in not finding that the trial court abused it discretion in denying leave to amend. For this reason, Respondents respectfully submit that the Petition for Writ of Certiorari with respect to the issue of the trial court's refused to allow the amended pleadings be denied.

II. THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DID NOT ERR IN AFFIRMING THE

JUDGMENT OF THE TRIAL COURT GRANTING BILL HEARD'S AND GMAC'S MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO THE TRUTH-IN-LENDING ALLEGATION RELATING TO THE DISCLOSURE OF A DOCUMENTARY FEE.

Layfield argues in her petition that the decision of the United States Court of Appeals for the Fifth Circuit in the case *sub judice* conflicts with a decision of the same circuit denominated *Abbey vs. Columbus Dodge, Inc.*, 607 F. 2d 85 (5th Cir. 1979). Respondents submit that there is no conflict whatsoever between these two cases, but even if there was, a conflict between decisions of the same circuit is not a proper basis upon which to petition this Court for a Writ of Certiorari. Rather, a conflict within the same circuit should be a matter for rehearing or rehearing en banc in the Court of Appeals. Layfield did apply for rehearing en banc based upon the same contentions set forth in her Petition for Writ of Certiorari, and Rehearing and Rehearing En Banc were promptly denied.

In addition, her argument that the Fifth Circuit case of *Abbey vs. Columbus Dodge, Inc., supra,* conflicts with the Fifth Circuit's opinion in the case *sub judice* is not well founded. The Fifth Circuit decided the *Abbey* case, *supra,* not on the ground that a portion of the fee was remitted to the assignee of the retail installment contract, but on the ground that the "filing fee" charged in that case did not fall within one of the four classes of charges which may be individually excluded from the finance charge if properly disclosed by virtue of Regulation Z., § 226.4(b), 12 CFR 226.4(b). With respect to the case *sub judice,* under the authorty of *Meyers vs. Clearview Dodge Sales, Inc.*, 539 F. 2d 511 (5th Cir. 1976), the documentary fee involved in this case was properly disclosed as an "other charge," and the trial and appellate courts properly held that Layfield was not entitled to recover for that alleged Truth-in-Lending violation.

Neither is it correct, as Layfield asserts, that there is no evidence in the record that the entire documentary fee charged in this case was retained by the dealer, and that no portion of it

was paid to any other party. An affidavit atached to Bill Heard's Motion for Summary Judgment shows that the documentary fee is a fee charged for the preparation of title and license documents, delivering and picking up such documents from the Courthouse, and various other services in connection with such documents, and that no portion of the fee is paid to any governmental agency or official. Further, the affidavit showed that the fee was charged on both credit and noncredit sales, and is not imposed by the dealer as an incident to or as a condition of the extension of credit.

The Motion for Summary Judgment filed by GMAC included the affidavit of its branch manager. That affidavit shows that it was the understanding of GMAC that the entire documentary fee charged to the retail customer was retained by the dealer as compensation for the services rendered in connection with the preparation and filing of license and title documents and the maintenance of automobiles from the time that they come into the dealer's inventory until they are delivered to the retail customer.

From these two affidavits, it is clearly shown that Bill Heard did not pay any portion of the documentary fee to any governmental agency or official, and the only permissible conclusion is that it did not pay any portion of the fee to the assignee of the contract, GMAC. Since these were the only parties to whom a portion of the fee might be paid and there were no other creditors or parties involved, the only permissible conclusion is that the entire fee was retained by Bill Heard.

For the foregoing reasons, Respondents respectfully submit that the Fifth Circuit Court of Appeals correctly affirmed the judgment of the trial court granting Bill Heard's and GMAC's Motion for Summary Judgment with respect to Layfield's allegation of a Truth-in-Lending violation.

CONCLUSION

Layfield's Petition for Writ of Certiorari raises two points in support of her petition. First, Layfield asserts that the trial court abused its discretion in disallowing her belated amendment to her complaint, notwithstanding the fact that she failed to comply with the Federal Rules of Civil Producure, the local rules of court regarding motions, the grounds asserted for the motion were admittedly false, and that allowance of the amendments would have been prejudicial to Bill Heard and GMAC. Second, she asserts that summary judgment should not have been granted to Bill Heard and GMAC with respect to the alleged Truth-in-Lending claim regarding disclosure of the documentary fee, notwithstanding the fact that the documentary fee was disclosed in the precise manner dictated by the controlling precedent of *Meyers vs. Clearview Dodge Sales, Inc., supra*.. These issues were fully briefed and argued in the trial court and the Fifth Circuit Court of Appeals, with the result that eminently proper findings and judgments were entered in favor of Bill Heard and GMAC. It is submitted that a reargument of these same issues, which are hardly issues of grave public importance, should not be allowed, and Respondents therefore respectfully submit that Layfield's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have served Petitioner with three (3) copies of the foregoing Brief in Opposition to the Petition for Writ of Certiorari by mailing a copy of same, postage prepaid and properly addressed, to Mr. Ron S. Iddins, Attorney at Law, P. O. Box 503, Columbus, Georgia 31902.

This 23 day of April, 1980.

Ernest Kirk II
Ernest Kirk, II